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ABSTRACT

This document is a discussion draft intended to lead to the formulation of a set of guidelines by the state board of education concerning three areas of teacher negotiations: scope, good faith bargaining, and prohibited practices. It has been prepared in the form of an organized data base that focuses on summarizing the present state of the law rather than on suggesting changes in the law. Although treated separately, scope, good faith bargaining, and unfair labor practices are interdependent. For example, a refusal to bargain on a subject within the mandatory scope of negotiations and a violation of good faith bargaining can both be treated as unfair labor practices. Appendixes present a summary of the scope of Connecticut contracts, tabular analyses of state statutes, footnotes, and a bibliography. (Author/IRT)

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TEACHER-BOARD RELATIONS IN CONNECTICUT: A SUMMARY OF THE LAW REGARDING SCOPE OF NEGOTIATIONS, GOOD FAITH BARGAINING, AND UNFAIR LABOR PRACTICES

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September 1975

EA 007 611

Preliminary Draft
for
Commissioner Mark Shedd
Connecticut State Department of Education

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INTRODUCTION

This document is intended as a discussion draft leading to the final formulation of a set of guidelines by the State Board of Education concerning three areas of teacher negotiations: scope, good faith bargaining, and prohibited practices.[1] Thus, it has been prepared in the form of an organized data base which focuses on summarizing the present state of the law rather than suggesting changes in the law; for the primary purpose of this document is to provide information, not to recommend legislation.[2] The ultimate goal of the document, like that of teachers and boards, is educational.

The immediate impetus for the development of this document was a series of meetings coordinated by Mark Shedd, Commissioner of the State Department of Education (SDE), for various interested parties and organizations.[3] The background of legal developments leading up to this undertaking, which includes two landmark cases in public sector labor law and a teacher negotiations statute currently in its tenth anniversary, make Connecticut one of the important states in this field. A review of the legal milestones provides a useful perspective[4] for this report:

1951 - Norwalk case[5]	- establishing inter alia the permissibility of teacher-board negotiations[6]
1962 - Bulletin 85[7]	- providing guidelines for teacher-board negotiations, including scope[8] and good faith[9]

1965 - Teacher Negotiations Act[10]	- mandating "good faith"[11] teacher-board negotiations with respect to "salaries and other conditions of employment"[12]
1972 - West Hartford case[13]	- interpreting the Teacher Negotiations Act with respect to scope, good faith, and unfair labor practices[14]
1975 - Special Act 75-91[15]	- mandating the development of guidelines on scope, good faith, and unfair labor practices for teacher-board negotiations

Due to the support of Commissioner Shedd and the cooperation of various interested parties,[16] a broad reservoir of knowledge was tapped for distillation into this document. The specific sources of study were:[17]

- public sector cases and statutes[18]
- private sector cases under the N.L.R.A.[19]
- law review articles, books, and published reports[20]
- unpublished memos and minutes of the SDE
- empirical studies,[21] including one for this report[22]
- individual interviews with attorney advocates[23]

Althouth treated separately in the subsequent sections of this document, scope, good faith bargaining, and unfair labor practices are interdependent, not independent, areas. For example, a refusal to bargain on a subject within the mandatory scope of negotiations and a violation of good faith bargaining can both be treated as unfair labor practices.[24] Moreover,

these concepts relate not only to each other, but also to other legal dimensions of teacher-board negotiations. For example, it has been argued that the scope of negotiations has a direct relationship to the size of the bargaining unit and has an inverse relationship to the right to strike.[25] Finally, specific standards for scope, good faith, and prohibited practices immediately depend upon voluntary compliance and ultimately depend upon effective enforcement.[26] With these caveats in mind, the subsequent sections of this report have been prepared as the basis for guidelines in these three respective areas of teacher-board negotiations within the present legal framework in Connecticut.

SCOPE OF NEGOTIATIONS[27]

Despite the variety of formulations[28] and applications[29] of scope in Connecticut and other jurisdictions, three contextual cues have emerged:

- The scope issue is a flexible and evolving area of the law.[30]
- The general test to determine negotiability is a balancing notion, weighing the employment interests of teachers against the management rights of boards.[31]
- The general trend is toward an expanding scope of negotiations.[32]

A review of the statutory and case law in Connecticut set against the broader context of public and private sector law reveals several identifiable principles and practices:

1. The scope of negotiations is divided into two areas and is bounded by a third area:[33]
   a) "mandatory" area - those subjects which must be negotiated upon the request of either party[34]
   b) "permissive" area - those subjects which may be negotiated only upon the concurrence of both parties[35]
   c) "illegal" area - those subjects which may not be negotiated into a contract regardless of the requests or concurrence of the parties[36]
2. The statutory standard for the mandatory area of negotiations is "salaries and other conditions of employment," not "salary schedules and personnel policies relative to employment."[37]
3. Topics which fall in the mandatory area of negotiations include:[38]
   a) salary

b) fringe benefits

c) class size

d) teacher load

e) grievance procedures[39]

f) assignment and compensation for extracurricular activities

g) board prerogatives[40]

4. The illegal area delimiting the scope of negotiations consists of proposals or provisions that require some action which is unlawful or inconsistent with the basic policy of the statute,[41] including the abdication of any duty exclusively charged to local boards of education.[42]

5. The determination of whether a topic fits in the mandatory area or in the permissible area of negotiations depends upon whether the topic is more a matter of "conditions of employment" or more a matter of "educational policy."[43]

   a) The categories of "conditions of employment" and "educational policy" are somewhat flexible and overlapping notions.[44]

   b) "Educational policy" consists of the statutory powers of boards of education, including those matters which are fundamental to the existence, direction, and operation of the school system.[45]

   c) Prevailing[46] practices of teacher-board negotiations provide an additional factor for this determination.[47]

6. Topics which are statutory powers of boards of education (column I)[48] or which are subject to statutory requirements (column II)[49] include:[50]

I	II
a) planning, maintenance, and operation of school facilities and equipment[51]	g) curriculum[54]
b) employment and dismissal of teachers	h) length of school year[55]
c) school assignment and transportation of pupils	i) length of school day[56]
	j) teacher dismissal[57]
	k) teacher evaluation[58]

I

d) program evaluation

e) textbook selection[52]

f) disciplinary rules[53]

II

l) teacher in-service training[59]

m) sick leave[60]

n) military leave[61]

o) non-teaching duties[62]

7. Subjects of the prevailing practice of negotiations include:[63]

a) length of school year

b) non-teaching duties

c) length of school day

d) teacher evaluation

e) planning periods

f) school calendar

g) curriculum development

h) teacher-parent conferences

i) pupil-teacher ratio

j) selection of textbooks

GOOD FAITH BARGAINING[64]

Good faith bargaining, like most other subjective standards in the law,[65] is a difficult and elusive concept.[66] But like these other standards, it is an important and inescapable part of the law.

It is admitted that there are currently violations and abuses in this area of teacher-board negotiations,[67] and it is assumed that these problems can be significantly reduced by crystallizing and publicizing guidelines. Like scope, good faith bargaining is "an evolving concept, rooted in statute."[68] And like scope, good faith bargaining may be outlined based on the experience under Connecticut's statute and that of other jurisdictions which have the same statutory standard. The salient points are listed below:

1. Good faith bargaining refers to the obligation to participate actively in deliberations so as to indicate a present intention to reach an agreement if possible.[69]

   a) The parties must negotiate with an open mind.[70]

   b) The parties must make a sincere effort in negotiations to find a common ground.[71]

   c) The parties are not compelled to agree to a proposal or to make a concession.[72]

2. Except where the conduct constitutes a refusal to bargain, the test of good faith is the totality of the parties conduct throughout the negotiations, not any single act alone.[73]

3. Indicia of bad faith, which do not per se constitute violations of the good faith standard, but which can contribute to such a finding, include the following:[74]

a) failure to make counterproposals[75]

b) insistence on a very broad prerogatives clause[76]

c) attempts to bypass[77] or undermine[78] the teachers' representative

d) failure to designate an agent with sufficient authority[79]

e) adoption of an inflexible take-it-or-leave-it position from the beginning of bargaining[80]

f) attempts to impose preconditions on the bargaining process[81]

g) adoption of dilatory or evasive tactics by one party[82]

h) commission of unfair labor practices[83]

4. Intertwined with the good faith requirement, there is a duty on the part of the employer to supply the teacher representatives, upon request, with sufficient data to enable them to negotiate in an informed and intelligent manner.[84]

a) The request may be oral[85] but it must be made in good faith.[86]

b) The information demanded must be reasonably necessary to the performance of the teachers' organization as bargaining representative.[87]

c) Financial information must be supplied where the board claims inability to pay.[88]

d) The information must be made available promptly[89] and in a reasonably useful form.[90]

5. Also intertwined with the good faith requirement, there is a duty on the part of the teachers' organization to represent everyone in the unit fairly.[91]

6. It is not a violation of good faith bargaining for the board to communicate directly with teachers during negotiations if it does so noncoercively and without bypassing or denigrating the teachers' bargaining representatives.[92]

7. The duty to bargain in good faith continues even after the statutory mediation and arbitration procedures have been exhausted.[93]

UNFAIR LABOR PRACTICES[94]

The provisions of the Teacher Negotiations Act relating to unfair labor practices[95] do not connect to the body of case law developed under the N.L.R.A. and similarly specific public sector state statutes as clearly and completely as do the provisions relating to scope and good faith bargaining. However, Connecticut courts have already cemented the connection at least with respect to those unfair labor practices categorized as a refusal to bargain,[96] and other practices arguably are also prohibited under the Teacher Negotiations Act.[97]

1. Connecticut cases have held that unilateral changes implemented by an employer prior[98] to an impasse concerning mandatory subjects of negotiation constitute a per se refusal to bargain,[99] except where the employer, after notice and consultation, institutes an offer that the teacher organization has rejected.[100]

2. Labor practices found to be unfair in cases outside Connecticut under this per-se-refusal-to-bargain category include:

   a) insistence to the point of impasse on a permissive subject of negotiations[101]

   b) failure to sign a written memorandum of agreement[102]

   c) insistence on negotiating in writing rather than in person[103]

3. Labor practices found to be unfair in cases outside of Connecticut which also may apply under the provisions of the Teacher Negotiations Act[104] include:[105]

   a) prohibition or restriction of organizational solicitation on school property by school employees during non-working hours[106]

b) action favoring or assisting one of the competing teacher organizations prior to certification[107]

c) discrimination in hire, tenure, or conditions of employment according to membership or activities in a teachers' organization[108]

TEACHER-BOARD RELATIONS IN CONNECTICUT: A SUMMARY OF THE LAW REGARDING SCOPE OF NEGOTIATIONS, GOOD FAITH BARGAINING, AND UNFAIR LABOR PRACTICES

Appendices

APPENDIX I[109]

SUMMARY OF SCOPE OF CONNECTICUT CONTRACTS,

1974-1975[110]

1. PAID LEAVE PROVISIONS

Yes		46	92%
No		4	

2. GRIEVANCE PROCEDURE

Yes		43	86%
Binding	25		
Binding on contract items only	1		
Binding if parties agree	1		
Binding if money isn't involved	1		
Advisory only	15		
No		7	

3. EXTENDED LEAVES OF ABSENCE

Yes		41	82%
No		9	

4. LENGTH OF SCHOOL YEAR

Yes		38	76%
No		12	

5. NON-TEACHING DUTIES

Yes		37	[illegible]
Board prerogative	18		
No		13	

6. TEACHING HOURS

Yes		35	70%
Board prerogative	7		
No		15	

7. TEACHER EVALUATION

Yes		33	66%
Board prerogative	3		
No		17	

8. DUTY-FREE LUNCH PERIODS

Yes		33	66%
No		17	

9. PLANNING PERIODS

Yes		31	62%
No		19	

10. TEACHING LOAD

Yes		30	60%
Board prerogative	5		
No		20	

11. BOARD PREROGATIVES

Yes		26	52%
Specified	11		
Broadly stated	15		
No		24	

12. SCHOOL CALENDAR

Yes		26	52%
Board prerogative	13		
No		24	

13. CURRICULUM DEVELOPMENT

Yes		25	50%
No		25	

14. CLASS SIZE

Yes		24	48%
Board prerogative	6		
No		26	

15. LONGEVITY PAYMENTS

Yes	23	....	46%
No	27		

16. PROVISION FOR WITHHOLDING INCREMENTS

Yes	22	....	44%
No	28		

17. TEACHER-PARENT CONFERENCES

Yes	19	....	38%
No	31		

18. PUPIL-TEACHER RATIO

Yes	19	....	38%
Board prerogative 5			
No	31		

19. SEVERANCE PAY PROVISION

Yes	18	....	36%
No	32		

20. SELECTION OF TEXTBOOKS

Yes	18	....	36%
Board prerogative 1			
No	32		

21. EXTRA-CURRICULAR ACTIVITIES

Yes	14	....	28%
No	36		

22. LAYOFF PROCEDURE

Yes	10	....	20%
Board prerogative 3			
No	40		

23. SECRETARIAL AND CLERICAL ASSISTANCE NEGOTIATED

Yes	9	18%
No	41	

24. FIELD TRIPS

Yes	8	16%
Board prerogative	42	
No	42	

25. SENIORITY

Yes	6	12%
No	44	

26. PUPIL PROGRESS REPORTS

Yes	4	8%
No	46	

27. LESSON PLAN REQUIREMENT

Yes	4	8%
No	46	

APPENDIX II

SUMMARY OF ANALYSES OF STATE STATUTES[111]

	SCOPE / mandatory / permissive or meet & confer \ bd. prerogatives	GOOD FAITH / affirmation / semi-affirmation \ explanation	UNFAIR LABOR PRACTICES / protected rights \ limited prohibitions \ detailed prohibitions
ALABAMA	X	/	
CALIFORNIA	Y	/	
CONNECTICUT	/	X	Y
DELAWARE	/	/	/
FLORIDA	X	X	X
HAWAII	X	/	X
IDAHO	Y	/	
INDIANA	X	X	X
IOWA	X	X	X
KANSAS	/	/	
MAINE	/	X	X
MARYLAND	X	/	/
MASSACHUSETTS	/	X	X
MICHIGAN	/	X	X
MINNESOTA	X	X	X
MONTANA	X	/	X
NEBRASKA	/	/	/
NEVADA	X	X	\
NEW JERSEY	/		X
NEW YORK	/	/	X
NORTH DAKOTA	X	/	Y
OKLAHOMA	/	/	\
OREGON	/	X	\
PENNSYLVANIA	X	X	X
RHODE ISLAND	/		
SOUTH DAKOTA	/	X	X
VERMONT	/	/	Y
WASHINGTON	/		\
WISCONSIN	X		X
CONNECTICUT[112] Municipal	/	X	X
CONNECTICUT State	X	X	\
CONNECTICUT Private	/		X
N.L.R.A.[113]	/	X	X

APPENDIX II (cont.)

ANALYSIS OF STATE STATUTES:

SCOPE

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
ALASKA	"matters pertaining to their employment and the fulfillment of their professional duties.... grievance procedures"		"Nothing [in this statute] may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies."
CALIFORNIA		"meet and confer...with regard to all matters relating to employment conditions and employer-employee relations, and in addition...with regard to procedures relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer....[and] with regard to a procedure for the resolution of persistent disagreements."	"The enactment of this article...shall not be construed as prohibiting a school employer from making the final decision with regard to all matters specified in [the meet and confer section]...."
CONNECTICUT	"salaries and other conditions of employment".		
DELAWARE	"all matters relating to salaries, employee benefits, and working conditions.... 'Salaries' are defined as the direct compensation of the employee for his (her) professional services. 'Employee benefits' are defined as those items contributing to the employee's welfare, paid by the local school district and are not subject to income taxation of the employee, i.e., medical and life insurance. 'Employee benefits' also includes a 'dues check-off system.' 'Working conditions' are defined as physical conditions of facilities of the school district building such as, but not limited to, heat, lighting, sanitation, and food processing."	"Nothing in this chapter shall be construed as to prohibit the Board of Education and the exclusive negotiating representatives from mutually agreeing upon other matters for discussion, except as prohibited in [the anti-strike section]."	

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
FLORIDA	"terms and conditions of employment.... [and] a grievance procedure"		"It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards for services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons."
HAWAII	"wages, hours, and other terms and conditions of employment"	"A public employer shall have the power to enter into written agreement within the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure."	"Excluded from the subjects of negotiations are matters of classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work...or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualifications, standards or work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies."
IDAHO		"matters and conditions subject to negotiations as specified in the negotiation agreement between said parties"	"Nothing contained herein is intended or shall conflict with, or abrogate the powers or duties and responsibilities vested in... the board of trustees of school districts by the laws of the state.... Each school district board of trustees is entitled, without negotiation or reference to any negotiated agreement, to take action

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
IDAHO (continued)			that may be necessary to carry out its responsibility due to situations of emergency or acts of God."
INDIANA	"[s]alary, wages, hours, and salary and wage related fringe benefits"	"grievance procedure.... [and] working conditions, other than those provided in [the mandatory section]; curriculum development and revision; textbook selection; teaching methods; selection, assignment or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; class size or budget appropriations."	"It shall be unlawful for a school employer to enter into any agreement that would place such employer in a position of deficit financing.... School employers shall have the responsibility and authority to manage and direct in behalf of the public and operations and activities of the school corporation to the full extent authorized by law. Such responsibility and activity shall include but not be limited to the right of the school employer to: (1) direct the work of its employees; (2) establish policy; (3) hire, promote, demote, transfer, assign and retain employees; (4) suspend or discharge its employees in accordance with applicable law; (5) maintain the efficiency of school operations; (6) relieve its employees from duties because of lack of work or other legitimate reason; (7) take actions necessary to carry out the mission of the public schools as provided by law."
IOWA	"wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for shift reduction, in-service training...also...authorizing dues check-off...and grievance procedures"	"...and other matters mutually agreed upon"	"Public employers shall have...the right to: (1) Direct the work of its public employees. (2) Hire, promote, demote, transfer, assign, and retain public employees in positions within the public agency. (3) Suspend or discharge public employees for proper cause. (4) Maintain the efficiency of governmental operations. (5) Relieve public employees from duties because of lack of work or for other legitimate reasons. (6) Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted. (7) Take such actions as may be necessary to carry out the mission of the public employer. (8) Initiate, prepare, certify, and administer its budget. (9) Exercise all powers and duties granted to the public employer by law."

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
KANSAS	"terms and conditions of professional service"		
MAINE	"wages, hours, working conditions and contract grievance arbitration"	"meet and consult but not negotiate with respect to educational policies"	
MARYLAND	"all matters relating to salaries, wages, hours and other working conditions"	"binding arbitration of grievances"	"Nothing contained herein shall be deemed to supersede...the rules and regulations of public school employers which may establish and regulate tenure.... the public school employer shall render the final determination as to all matters which have been the subject of negotiation...."
MASSACHUSETTS	"wages, hours, standards of productivity and performance, any other terms and conditions of employment"	"a grievance procedure culminating in final and binding arbitration"	
MICHIGAN	"wages, hours, and other terms and conditions of employment"		
MINNESOTA	"grievance procedures and other terms and conditions of employment.... The term 'terms and conditions of employment' means the hours of employment, the compensation thereof including fringe benefits, and the employer's personnel policies affecting the working conditions of the employees...."	"A public employer has the obligation to meet and confer with public employees to discuss those matters relating to their employment not included under [the mandatory section]."	"In the case of professional employees the term ['terms and conditions of employment'] does not mean educational policies of a school district...."
MONTANA	"matters relating directly to the employer-teacher relationship such as salary, hours and other terms of employment"	"nothing [in the board prerogatives action] shall limit the obligations of employers to meet and confer.... on any proposal advanced by a representative of teachers"	"The matters of negotiation and bargaining for agreement shall not include matters of curriculum, policy of operation, selection of teachers and other personnel, or physical plant of schools or other facilities...."
NEBRASKA		"meet and confer...regarding employment and relations"	

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
NEVADA	"The scope of mandatory bargaining is limited to: (a) Salary or wage rates or other forms of direct monetary compensation. (b) Sick leave. (c) Vacation leave. (d) Holidays. (e) Other paid or nonpaid leaves of absence. (f) Insurance benefits. (g) Total hours of work required of an employee on each work day or work week. (h) Total number of days' work required of an employee in a work year. (i) Discharge and disciplinary procedures. (j) Recognition clause. (k) The method used to classify employees in the negotiating unit. (l) Deduction of dues for the recognized employee organization. (m) Protection of employees in negotiating unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter. (n) No-strike provisions consistent with the provisions of this chapter. (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements. (p) General savings clauses. (q) Duration of collective bargaining agreements. (r) Safety. (s) Teacher preparation time. (t) Procedures for reduction in work force."	"The local government employer shall discuss subject matters outside the scope of mandatory bargaining but it is not required to negotiate such matters."	"Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include: (a) The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline. (b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2. (c) The right to determine: (1) Appropriate staffing levels and work performance standards, except for safety considerations; (2) The content of the workday, including without limitation work-load factors, except safety considerations; (3) The quality and quantity of services to be offered to the public; (4) The means and methods of offering those services. Notwithstanding the provisions of any collective bargaining agreement negotiated pursuant to this chapter, a local government employer is entitled to take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder.... The provisions of this chapter, including without limitation the provisions of this section, recognize and declare the ultimate right and responsibility of the local government employer to manage its operation in the most efficient manner consistent with the best interests of all its citizens, its taxpayers and its employees."
NEW JERSEY	"terms and conditions of employment,... [and] grievance procedures"		
NEW YORK	"salaries, wages, hours and other terms and conditions of employment"		
NORTH DAKOTA	"matters relating to terms and conditions of employment and employer-employee relations"		"Nothing contained herein is intended to or shall conflict with, contravene, abrogate, or diminish the powers, authority, duties, and responsibilities vested in boards of education by the statutes and laws of the state...."

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
OKLAHOMA	"items affecting the performance of professional service"		
OREGON	"'[e]mployment relations' includ[ing], but...not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment"	"a grievance procedure culminating to binding arbitration"	
PENNSYLVANIA	"wages, hours and other terms and conditions of employment.... [and] arbitration of disputes or grievances"	"Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives."	"Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas as discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and direction of personnel."
RHODE ISLAND	"hours, salary, working conditions and all other terms and conditions of professional employment"		
SOUTH DAKOTA	"grievance procedures and.... rates of pay, hours of employment and conditions of employment"		
VERMONT	"matters of salary, related economic conditions of employment, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the state"		
WASHINGTON	"school policies related to, but not limited to, curriculum, textbook selection, inservice training, student teaching programs, personnel, hiring and assignment practices, leaves of absence, salaries and salary schedules and non-instructional duties"		
WISCONSIN	"wages, hours and conditions of employment"		"The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees."

	Mandatory	Permissive or Meet & Confer	Board Prerogatives
CONNECTICUT-Municipal	"wages, hours and other conditions of employment"		
CONNECTICUT-State	"wages, hours and other conditions of employment"		"The establishment, conduct and grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining."
CONNECTICUT-Private	"rates of pay, wages, hours of employment"		
N.L.R.A.	"wages, hours and other terms and conditions of employment"		

APPENDIX II (cont.)

ANALYSIS OF STATE STATUTES:

GOOD FAITH

	at reasonable times	related to ...get-making process	in good faith	not compelled to agree or make concessions
ALABAMA			✓	
CALIFORNIA			✓*	
CONNECTICUT	✓	✓	✓	✓
DELAWARE	✓		✓	
FLORIDA	✓		✓	✓
HAWAII	✓	✓	✓	
IDAHO			✓	
INDIANA	✓		✓	✓
IOWA	✓	✓	✓	✓
KANSAS			✓	
MAINE	✓		✓	✓
MARYLAND	✓		✓	
MASSACHUSETTS	✓	✓	✓	✓
MICHIGAN	✓		✓	✓
MINNESOTA			✓	✓
MONTANA			✓	
NEBRASKA			✓	
NEVADA	✓		✓	✓
NEW JERSEY				
NEW YORK			✓	
NORTH DAKOTA	✓		✓	
OKLAHOMA			✓	
OREGON	✓		✓	✓
PENNSYLVANIA	✓		✓	✓
RHODE ISLAND			✓	
SOUTH DAKOTA	✓		✓	✓ *
VERMONT	✓	✓	✓	
WASHINGTON				
WISCONSIN				
TOTAL (29)	16	5	26	12
CONNECTICUT-Municipal	✓			✓
CONNECTICUT-State	✓	✓	✓	✓
CONNECTICUT-Private	✓	✓	✓	✓
N.L.R.A.	✓		✓	✓

* "in a conscientious effort"

** "but shall require a statement of rationale for any position taken by either party in negotiations"

APPENDIX II (cont.)

ANALYSIS OF STATE STATUTES:

UNFAIR LABOR PRACTICES

	Interfere, restrain, coerce	Dominate	Discriminate in hire or tenure	Discriminate re: charges or testimony	Refuse to bargain	Others	Restrain or coerce	Cause to discriminate	Refuse to bargain	Picketing etc.	Others	Protected rights	Agency
N.L.R.A.	§8(a)(1)	§8(a)(2)	§8(a)(3)	§8(a)(4)	§8(a)(5)		§8(b)(1)	§8(b)(2)	§8(b)(3)	§8(b)(4), (7)		§7	N.L.R.B.
ALABAMA													
CALIFORNIA	✓												
CONNECTICUT	✓						✓					✓	
DELAWARE	✓											✓	
FLORIDA	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	PERC
HAWAII	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	PERB
IDAHO													
INDIANA	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	EERB
IOWA	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	PERB
KANSAS													
MAINE	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	PELRB
MARYLAND	✓											✓	
MASSACHUSETTS	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	LRC
MICHIGAN	✓	✓	✓	✓	✓							✓	ERC
MINNESOTA	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	PERB
MONTANA	✓	✓			✓	✓	✓		✓	✓	✓	✓	courts
NEBRASKA												✓	
NEVADA	✓	✓	✓	✓	✓	✓	✓		✓		✓		EMRB
NEW JERSEY	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	ERC

APPENDIX II (cont.)

ANALYSIS OF STATE STATUTES:

UNFAIR LABOR PRACTICES

	Interfere, restrain, coerce	Dominate	Discriminate in hire or tenure	Discriminate re. charges or testimony	Refuse to bargain	Others	Restrain or coerce	Cause to discriminate	Refuse to bargain	Picketing etc.	Others	Protected rights	Agency
N.L.R.A.	§8(a)(1)	§8(a)(2)	§8(a)(3)	§8(a)(4)	§8(a)(5)		§8(b)(1)	§8(b)(2)	§8(b)(3)	§8(b)(4), (7)		§7	N.L.R.B.
NEW YORK	✓	✓	✓	✓	✓	✓	✓		✓			✓	PERB
NORTH DAKOTA						✓						✓	
OKLAHOMA						✓							
OREGON	✓	✓	✓	✓	✓	✓	✓		✓		✓		PERB
PENNSYLVANIA	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	LRB
RHODE ISLAND					✓				✓			✓	SLRB
SOUTH DAKOTA	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	DMA
VERMONT	✓						✓					✓	
WASHINGTON						✓							
WISCONSIN	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓	ERC
TOTAL (29)	20	16	15	14	17	15	16	11	16	5	14	21	pub. 11 ed. 1 priv. 4
CONNECTICUT Municipal	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	SBLR
CONNECTICUT State	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		SBLR
CONNECTICUT Private	✓	✓	✓	✓	✓	✓						✓	SBLR

APPENDIX III

FOOTNOTES*

[1]See note 15 infra for the specific phraseology used for these three general categories in the statute which mandated the development of these guidelines.

[2]Although it is not its function in this report, this information may also be useful in considering possible changes in the present statute.

It is also recognized that this document is not an end-all. The author only claims to have made a good faith effort at what Leonard (1974 at 8 n.2) termed a "Herculean" task.

[3]The meeting for members of the State Board of Education, mediators serving the Board, and representatives of the State Department of Education was held on October 15, 1974. The meeting for attorney advocates was held on December 17, 1974. The meeting for representatives of various interest groups (e.g., CAASA, CABE, CSFT, CEA, ESPAC) was held on March 6, 1975. Confidential synopses of these meetings were provided by the Commissioner for the preparation of this report.

[4]Legal developments on the federal level add another

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*The style for these notes is a combination of legal ("White-book") and educational (APA) citation systems. Legal style predominates due to the nature of the sources. However, an economizing feature of APA style has been incorporated for references to books, periodical articles, and reports: the use of the author's surname and the publication date in the footnotes to represent an entry given in its complete form in the bibliography. This modification has been made to reduce the length of the report and still provide independently useful appendices as related resources.

See, e.g., note 26 infra: "ROWE (1967 at 6)" refers to page 60 in the booklet listed in the bibliography as H. ROWE, THE EFFECTS OF THE 1969 AND 1967 PROFESSIONAL EMPLOYEE ACTS ON SELECTED SCHOOL DISTRICTS IN CONNECTICUT (1967).

dimension. The two key milestones are the passage of the National Labor Relations Act in 1935, which mandated collective bargaining in the general private sector and the adoption of Executive Order 10,998 in 1962, which was hailed as the Magna Carta of labor relations in the federal public sector. The original legislation of the N.L.R.A. is known as the Wagner Act. 49 Stat. 449 (1935). The most well-known amendments to the N.L.R.A. are the Taft-Hartley Amendments of 1947 and the Landrum-Griffin Amendment of 1959. §61 Stat. 1961 (1947); 73 Stat. 541 (1959). Executive Order 10,998 was superseded by Executive Order 11,491, 3 C.F.R. §861 (Comp. 1966-70), as amended, 3 C.F.R. §505 (Supp. 1970).

In addition to the two landmark Connecticut cases, there have been other decisions in Connecticut relating to the three topics of this report. Two lower court decisions of direct interest are East Hartford Educ. Ass'n v. East Hartford Bd. of Educ., 30 Conn. Supp. 63, 299 A.2d 554 (Super. Ct. 1972) and New Haven Fed'n of Teachers v. New Haven Bd. of Educ., No. 132678 (Super. Ct. Feb. 12, 1973). Examples of decisions which have only a peripheral relat n-ship to the topics of this report are New Haven Fed'n of Teachers v. New Haven Bd. of Educ., 27 Conn. Supp. 298, 23 A.2d 333 (Super. Ct. 1967) and Waterbury Teachers' Ass'n v. City of Waterbury, 164 Conn. 426, 324 A.2d (1973).

[5]Norwalk Teachers Ass'n v. Board of Educ. of the City of Norwalk, 138 Conn. 269, 83 A.2d 482 (1951).

[6]The Norwalk decision adjudicated ten specific issues dealing with the labor relations of teachers with boards of education. Id. at 272 n.1. In response to one of the other issues, the Court seemed to support binding arbitration of contract-based grievances as being within the scope of negotiations:

> If it is borne in mind that arbitration is the result of mutual agreement, there is no reason to deny the power of the defendant to enter voluntarily into a contract to arbitrate a specific dispute....Its power to submit to arbitration would not extend to questions of policy....

Id. at 279. For the subsequent confirmation of the West Hartford decision, see note 39 infra.

[7]CONNECTICUT STATE BOARD OF EDUCATION (1962).

[8]The formula for scope in Bulletin 85 was "working relations" defined as "primarily includ[ing] such matters as personnel policies, salaries and conditions of employment." Id. at 5.

[9]The "policy statements" for Bulletin 85 included the statement that "[t]he board of education and the teachers should work together in good faith to reach agreement...." Id. at 6.

[10]CONN. GEN. STAT. REV. §10-153a to 10-153h (Noncumulative Supp. 1975). Although a limited version of §10-153a was passed as P.A. 562 in 1961, the basic structure of what is known as the Teacher Negotiations Act was enacted as P.A. 298 in 1965. Amendments were enacted as P.A. 752 (1967), P.A. 811

(1969), and P.A. 73-391 (1973).

For early comments on the Teacher Negotiations Act from the teachers' and boards' points of view, see Barstow (1966) and Pope & Vause (1969), respectively.

[11]"[S]uch duty [to negotiate] shall include the obligation of such board to meet at reasonable times...and to confer in good faith...." Id. §10-153a.

[12]Id. §10-153d. This formula for the mandatory area of scope of negotiations is repeated in two other parts of §10-153d and also appears in §§10-153a(c) and 10-153g. A more restricte formula of "salary schedules and personnel policies" is given in §10-153a(g). See note 37 and accompanying text infra.

[13]West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566, 295 A.2d 526 (1972).

The development of guidelines was foreshadowed and facilitated by the Connecticut Supreme Court's expansive approach in this critical case. The court expressly noted at the conclusion of the case:

> Because of the importance of this action, not only to the parties directly involved, but to the people of the state of Connecticut, we have gone beyond the requirements of the specific questions asked in order to render assistance....

162 Conn. at 600.

[14]The holdings and dicta of this decision largely form the basis for the subsequent sections of this report. The force of the dicta as guidelines for future conduct is

supported by the court's explicit explanation of its intent See note 13 supra.

[15]This statutory mandate was specifically enacted as follows:

> The state board of education shall prepare guidelines concerning the definition of "good faith bargaining," "fair labor practices," and "conditions of employment," as such terms are used in sections 10-153a to 10-153h, inclusive, of the general statutes. Such guidelines shall be submitted for review to the joint standing committee on education of the general assembly on or before February 15, 1976.

[16]Special appreciation is acknowledged for the assistance and advice of the following persons: Professor Peter Adomeit, U.Conn. School of Law; Dr. Robbins Barstow, CEA; Dr. Joseph Gordon, Mr. Kenneth Lundy, and Attorney Merle McClung, SDE; and Ms. Carolyn Mitchell, CABE.

Other organizations who were informed of the purposes of this project were CAASA, CSFT, ESPAC, and the Joint Education Committee of the Connecticut General Assembly.

[17]One category of material not primarily applicable to this report, but worth mentioning as a resource to those directly participating in teacher-board negotiations are handbooks on bargaining techniques. See CONN. PUBLIC EXPENDTURES COUNCIL (1968); LAW et al. (1966); NATIONAL EDUCATION ASS'N (1965); and VAUSE (1971).

[18]See, e.g., Appendix II - Tabular Analyses of State Statutes.

[19]Differences between the public and private sectors of employment have been explored by several sources. See,

e.g., Jones (1975 at 89), Pierce (1975 at 33). See generally WELLINGTON & WINTER (1971) and Bakke (1970) for their argument that public sector unions have a political advantage. See generally Pierce (1974) and Ridgeley (1975) for the proposal for redirecting political pressure to protect the public interest.

However, Connecticut courts have tended to rely heavily on private sector case law, almost to the exclusion of public sector decisions. See notes 99 and 100 infra. The statutory similarities between the N.L.R.A. and Connecticut's Teacher Negotiations Act with respect to the three focii of this document make private sector cases at least a useful starting point. Public sector cases in other jurisdictions provide parameters as to the application of private sector standards in a more comparable context.

[20]See Appendix IV - Bibliography.

[21]See, e.g., Barstow (1968); Hey et al. (1974); ROWE (1967).

[22]See Appendix I - Summary of Scope of Connecticut Contracts, 1974-75.

[23]The following attorney advocates kindly consented to being individually interviewed for the purposes of this report: Attorney Martin Gould (Counsel for CEA), Attorney Richard O'Connor, Attorney Russell Post, and Attorney Paul

Sherbacow (Counsel for CSFT). The authors' appreciation is also extended to Judge Robert Satter of the Court of Common Pleas for facilitating the arrangements for these interviews.

[24]See, e.g., the Connecticut Supreme Court's treatment of the final two issues in the West Hartford case. 162 Conn. at 592-600.

Several statutes (Florida, Hawaii, Massachusetts, Minnesota, Montana, Nevada, New Jersey, Oregon, Pennsylvania, South Dakota) list "good faith" not only as the standard for the mandatory scope of bargaining, but also as a specific unfair labor practice. Similarly, good faith is applied to scope in the N.L.R.A. within §8 which delineates unfair labor practices.

[25]See, e.g., Jones (1975), citing HANSLOW & OBERER (1971) with regard to the relationship between scope and unit determination and DUNLOP & BOK (1970) with regard to the relationship between scope and the right to strike. The latter argument was advanced in the Brief of Elihu Berman as Amicus Curiae at 6, West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566 (1972).

The absence of a right to strike arguably may lend itself not only to an expanded scope but also to a higher standard of good faith.

[26]Barstow (1968) and ROWE (1967 at 6) found that the extent of voluntary compliance with the guidelines of

Bulletin 85 was notably limited.

Under existing law, the ultimate source of enforcement is the judiciary. It has been argued that the courts have not only the final but also the primary authority for enforcement under existing legislation. Brief of W. Gary Vause as Amicus Curiae at 3, West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566 (1972). Alternatively, it has been argued that the SDE has primary enforcement power under existing legislation. Leonard (1974) at 4-20.

In terms of new legislation, the candidates for primary enforcement power include not only existing administrative agencies (e.g., SDE or State Board of Labor Relations) but also various possible agencies (Public Employment Relations Board, Municipal Employees Relations Board, Educational Employees Relations Board). See Appendix II - Tabular Analyses of State Statutes. There is no clear concensus within as well as among the various interest groups. Post (1972) predicted that a PERB will be established during this decade to police teacher-board negotiations. Hey et al. (1974 at 18) reported widespread support on the management side for tl creation of an EERB.

The related problem is that of the remedies available to whatever agency is entrusted with the responsibilities of investigating, hearing, and deciding issues in these three areas. The N.L.R.B. can issue various orders (e.g.,

cease and desist order, status quo ante order) and can grant various forms of related relief (e.g., reinstatement with or without back pay) dependent upon judicial enforcement and review. The remedies must be remedial, not punitive. However, even given this wide range of possible remedies, the N.L.R.B. has had difficulty in achieving effective enforcement in the good faith area. See, e.g., Industrial Union of Engineers v. N.L.R.B. (Tiidee Products), 426 F.2d 1243 (D.C. Cir.), cert. denied, 400 U.S. 950 (1970), remanded, 194 N.L.R.B. 1234 (1972). See generally THE DEVELOPING LABOR LAW (1971) at 841-72. The limits of remedial power are often narrower for state PERB's. See, e.g., Note, Good Faith (1973) at 665.

[27]The legislative mandate for these guidelines referred to "conditions of employment." See note 15 supra. The more general term "scope" is used in this report to provide a more complete perspective. However, in conformance with the legislative directive, the focus within the "mandatory area" of scope (see note 38 and accompanying text infra) is on conditions of employment, not salaries.

[28]See Appendix II - Tabular Analyses of State Statutes. The West Hartford court used the formulations in two other state statutes as points of perspective for interpreting Connecticut's statutory standard. 102 Conn. at 581. See also James (1975) at 94-7.

[29]The variation in applications are highlighted in Department of Educ. (Hawaii), Hawaii Public Employment Relations Bd. Decision No. 26 (1973), excerpted in SMITH, EDWARDS & CLARK (1974) at 446-52. In this decision the Hawaii PERB reaffirmed

its previous position that average class size was negotiable, but held that maximum class size was not negotiable.

[30]The typical statutory formula for scope does not contain a "simple litmus test" for determining negotiability. THE DEVELOPING LABOR LAW (1971) at 380. Referring to the statutory formula in Connecticut's statute, the West Hartford court said: "The use of the phrase 'conditions' of employment reflects a judgment that the scope of negotiations should be relatively broad, but sufficiently flexible to accommodate the changing needs of the parties." 165 Conn. at 581-82. See also WOLLETT & CHANIN (1970) at 6:38.

[31]Pennsylvania Labor Relations Bd. v. State College Area School Dist., GERR No. 603, E-1 (1975), excerpted in SMITH, EDWARDS, & CLARK (1975 supp.) at 37-47; Aberdeen Educ. Ass'n v. Board of Educ., 85 L.R.R.M. 2801 (S.D. 1974); Clark County School Dist. v. Local Government Employee Management Relations Bd., 530 P.2d 114 (Nev. 1974); Department of Educ. (Hawaii), Decision No. 26 (Hawaii P.E.R.B. 1973), excerpted in SMITH, EDWARDS, & CLARK (1974) at 446-52; National Educ. Ass'n of Shawnee Mission, Inc. v. Bd of Educ. of Shawnee Mission Unified School Di No. 512, 212 Kan. 741, 512 P.2d 426 (1973); Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n, 64 N.J. 17, 311 A.2d 737 (1973); Westwood Community Schools, Lab. Op. 313 (Mich. E.R.C. 1972) ("balancing approach to bargaining"), excerpted in SMITH, EDWARDS, & CLARK (1974) at 397-404.

The use of such a case-by-case balancing approach often

involves the development of qualifying "swing" terms. See, e.g., the tests of a "significant" effect in Clark City, a "substantial" interference in Hawaii, an "intimate and direct" relationship in Dunellen, and a "material" effect in the Aberdeen case and in S. Dakota Attorney General Opinion No. 72-10 (March 21, 1972). See also mandatory scope section of Montana statute excerpted in Appendix II.

The benefit of local accommodation provided by this ad hoc approach is pointed out by ROWE (1967 at 15), although CABE did not completely support his views. This argument was subsequently advanced in the Brief for Elihu Berman as Amicus Curiae at 7, West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566.

[32]See, e.g., the Connecticut Supreme Court's interpretation of the scope provision of the Teacher Negotiations Act:

> The intended breadth of negotiability is evidenced by the experience under the National Labor Relations Act....These cases indicate that the National Labor Relations Board and the courts have consistently expanded the number of items which fall within the penumbra of the phrase "other conditions of employment."

162 Conn. at 582. See also Jones (1975) at 109:

> Evidence from a variety of jurisdictions, in research from a number of different sources, all point in the same direction. Statutory limitations notwithstanding, public sector unions are pushing for and obtaining an expanded scope of bargaining.

See also note 110 infra.

[33]162 Conn. at 576-77, citing N.L.R.B. v. Wooster

Division, Borg-Warner Corp., 356 U.S. 342 (1958).

The Borg-Warner categorization is only a first step in the determination of negotiability. See, e.g., Westwood Community Schools, Lab. Op. 313 (Mich. E.R.B. 1972). See also note 43 infra. Moreover, it should be realized that there are often significant differences between the actual and formal scope of negotiations. See Pierce (1975) at 17; Jones (1975) at 94, citing Edwards, and at 101, citing Gerhart. The ultimate lever in the mandatory and permissive areas would appear to be bargaining power, not theoretic abstractions. See, e.g., Wollett (1971).

[34]Subjects which fit in this area may be insisted upon to the point of impasse without breaching good faith and fair labor practice standards. N.L.R.B. v. Wooster Division, Borg-Warner Corp., 356 U.S. 342, 349 (1958). This practice is termed "hard" bargaining.

[35]Subjects which fit in this area may be proposed but may not be insisted upon as a condition to an agreement. Id. Thus, the parties may only bargain "soft" with respect to a permissive subject.

The strategy of providing an intermediate, buffer zone is also reflected in the AASA's recommendation for an area of advisory consultation (WOLLETT & CHANIN, 1970 at 6:41), Post's (1973 at 21) proposal for a joint advisory committee, Stimbert's (1975 at 26) suggestions for problem-solving procedures, and the "meet and confer" provisions of various state statutes (Appendix II).

[36]Such subjects also cannot be insisted upon by either party. 356 U.S. at 360 (Harlan, J., concurring); Meat Cutters Union (Great Atlantic & Pac. Tea Co.), 81 N.L.R.B. 1052, 1061 (1949).

[37]162 Conn. at 577-78. This statutory standard has been classified as being in an intermediate position with regard to its breadth. Id. at 581; WOLLETT & CHANIN (1970) at 6:38. However, the great variation among the scope provisions of the Vermont state statutes makes such classification difficult. See Appendix II.

[38]162 Conn. at 576-88. The court specifically held that the following items are not mandatory subjects of negotiation: length of school day, school calendar, and the determination of whether there shall be extracurricular activities and what such activities shall be.

> [39][T]he board cannot delegate to an arbitrator its statutory authority as to matters of policy nor can it agree to binding arbitration of matters concerning which a statutory duty rests on the board alone.... Within these limitations binding arbitration of grievances within the terms and conditions of an existing group contract is...a mandatory subject of negotiation between the parties.

162 Conn. at 589.

[40]162 Conn. at 590-91, citing N.L.R.B. v. American National Insurance Co., 343 U.S. 395 (1952).

[41]THE DEVELOPING LABOR LAW, 1973 at 388. Morris admitted that "there are not many decisions to precisely show what constitute illegal subjects of bargaining." Id. at 435. Some of the examples he gives from the private sector are a provision

for a closed shop, a contract clause that is inconsistent with a union's duty of fair representation, and a proposal that discriminates among employees on the basis of race. Id. at 435-36.

[42]"[T]he board, in so contracting, may not abdicate any duty which the law has charged that the board and board alone shall perform." 162 Conn. at 577. See also note 39 supra.

[43]See note 31 supra and note 44 infra. A "back-up" test, when the balancing approach breaks down, is the impact analysis developed in Fibreboard Paper Products Corp. v. N.L.R.B. 379 U.S. 203 (1964). This test was used to determine the status of extracurricular activities in the West Hartford case. 162 Conn. at 583, 586-87. See also West Irondequoit Bd. of Educ., 4 P.E.R.B. ¶3070, 3089 (N.Y. P.E.R.B. 1971), aff'd, 346 N.Y. S.2d 418 (N.Y. Sup. Ct., App. Div. 1973).

[44]The Connecticut Supreme Court's specific statements in this regard were as follows:

> The problem would be simplified greatly if the phrase "conditions of employment" and its purported antithesis, educational policy, denoted two definite and distinct areas. Unfortunately, this is not the case. Many educational policy decisions make an impact on a teacher's conditions of employment and the converse is equally true. There is no unwavering line separating the two categories.

162 Conn. at 581.

See also the court's view of the statutory interplay between the boards' duties under §§10-220, 10-221 (note 48 infra) and the boards' duties under §§10-153a through 10-153h, revealing the further erosion of the sovereignty doctrine beyond that of the Norwalk case:

> We must consider also the policies underlying the Teacher Negotiation Act. The Act divests boards of education of some of the discretion which they otherwise could exercise under the provisions of §§10-220 and 10-221, since it imposes on the board the duty to negotiate certain matters with the representatives of teachers.

Id. at 584.

The evidence of the extent of the impact of the widening scope of negotiations on the boards' power to set educational policy is inconclusive, but seems to indicate that it is not as great as might be assumed. See PERRY & WILDMAN (1970) at 168-69; Jones (1975) at 109.

[45]The West Hartford court analogized educational policy to the private sector notion of "managerial decisions which lie at the core of entrepreneurial control" and to the public sector formula of Executive Order 10988: "such areas of discretion and policy as the mission of the agency, its budget, its organization and the assignment of its personnel, or the technology of performing its work." 162 Conn. at 583.

The court thereby arrived at the conclusion that:

> [Educational policy] is the sum total of the powers conferred by §§10-220 and 10-221. But like its counterpart "conditions of employment," it requires interpretation. Suffice it to say that,

> at the very least, matters of educational policy are those which are fundamental to the existence, direction and operation of the enterprise.

Id.

[46]The West Hartford court's use of the terms "history and custom of the industry" would seem to require the element of persistence in addition to prevalence. Id. at 584. However, prevalence is apparently sufficient, for the court used the data from the negotiated provisions in teacher board contracts for the previous year to apply this factor in its determination. Id. at 586.

It is also important to note that the court did not use a high cut-off point to determine prevailing practices based on the data from teacher-board contracts. Reminded in the briefs for plaintiff that not all negotiated provisions reach contractual form, the court accepted data which constituted less than a fifty per cent standard. For example, the number of contractual provisions for teacher load (n=41) represented 43 per cent of the contracts and only 24 per cent of the districts for that year. Id.

[47]The court cited the following language from the private sector decision of Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964), to explain the reasons for including this factor as relevant though not conclusive to its determination:

> Industrial experience is not only reflective of the interest of labor and management in the subject matter but it is also indicative of the amenability of such subjects to the collective bargaining process.

Id. at 584. Cf. Westwood Community Schools, Lab. Op. 313 (Mich. E.R.C. 1972).

[48]Items "a" through "c" are based on §220. Duties of boards of education.

> Boards of education shall maintain in their several towns good public elementary and secondary schools, implement the educational interests of the state as defined in section 10-4a and provide such other educational activities as in their judgment will best serve the interests of the town; provided any board of education may secure such opportunities in another town in accordance with provisions of the general statutes and shall give all the children of the town as nearly equal advantages as may be practicable; shall have charge of the schools of their respective towns; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make recommendations based on such study to the town; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes; shall determine the number, age and qualifications of the pupils to be admitted into each school; shall employ and dismiss the teachers of the schools of such towns subject to the provisions of sections 10-151 and 10-158a; shall designate the schools which shall be attended by the various children within their several towns; shall make such provisions as will enable each child of school age, residing in the town, who is of suitable mental and physical condition, to attend some public day school for the period required by law and provide for the transportation of children wherever transportation is reasonable and desirable, and for

> such purpose may make contracts covering periods of not more than five years; may arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently; shall cause each child between the ages of seven and sixteen living in the town to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of them by the town or necessary to carry into effect the powers and duties imposed upon them by law.

Items "d" through "f" are based on §221. Boards of education to prescribe rules.

> Boards of education shall prescribe rules for the management, studies, classification and discipline of the public schools and, subject to the control of the state board of education, the textbooks to be used; shall make rules for the arrangement, use and safe-keeping, within their respective jurisdictions, of the school libraries and approve the books selected therefor, and shall approve plans for schoolhouses and superintend any high or graded school in the manner specified in this title.

[49]Most of these requirements are in the nature of statutorily prescribed minima.

[50]See also §10-151a (access to personnel files), §10-152 (sex discrimination in teacher salaries), §10-153 (hiring discrimination based on marital status), §§10-235 and 10-236a (indemnification of teachers).

[51]See also §10-239 (use of school facilities for other purposes).

[52]See also §10-228 (textbook purchase) and §10-229 (change of textbooks).

[53]It is not altogether clear what is exactly intended by "discipline" in the public schools as used in §221 (note 48 supra), but it likely at least encompasses pupil discipline. See also §10-233 (suspension of pupils) and §10-234 (expulsion of pupils).

[54]§10-15 (corresponding generally to courses in English, Math, Social Studies, Health and Physical Education).

[55]§10-15 (at least 180 days).

[56]§10-16 (generally at least 4½ hours above kgn.).

[57]§10-151. See generally Zirkel (1976).

[58]§10-151b (according to guidelines by SBE and "such other guidelines as may be established by mutual agreement between the...board...and the teachers representative chosen pursuant to section 10-153b").

[59]§10-220a (drug education).

[60]§10-156 (at least 15 days per year).

[61]§10-156c (up to 30 days per year) and §10-156d (reemployment rights).

[62]§10-156a (guaranteed duty-free lunch period).

[63]See Appendix I - Summary of Scope of Connecticut Contracts.

[64]One caveat must be made clear at the outset. The good faith requirement is outlined in this section in terms of both parties. However, it should be noted that the Teacher Negotiations Act, in contrast to the N.L.R.A., explicitly imposes this duty only on the board. §10-153d. The N.L.R.A. defines

the duty as a "mutual obligation of the employer and the representative of the employees." §8(d). The West Hartford court found such a difference to be significant in its analysis of the negotiability of time-based subjects. However, it would be another case of "exalting form over substance" (see note 93 infra) to require good faith on only one side of the bargaining table. The language in §153d that "such obligation shall not compel either party" supports this view. See note 72 infra.

For a corresponding caveat with respect to unfair labor practices, see note 94 infra. In contrast, the duty to negotiate with respect to salaries and conditions of employment is expressly imposed on both the board and the teachers' representative. §10-153d.

[65] E.g., the "reasonable man" standard in tort law and mens rea in criminal law.

The analogy was explicitly employed in Times Publishing Co., 72 N.L.R.B. 676, 682-83 (1947), where the N.L.R.B. applied the "clean hands" doctrine as follows:

> The test of good faith is not a rigid but a fluctuating one, and is dependent in part on how a reasonable man might be expected to react to the bargaining attitude displayed by those across the table.

[66] In THE DEVELOPING LABOR LAW (1971) at 271, Morris concluded that the definition of good faith bargaining is "not readily identifiable, although hundreds of cases and exhaustive commentaries have undertaken the task."

See also Cooper (1966) at 653:

> If one were to select the single area of our national labor law which has posed the greatest difficulties for the National Labor Relations Board, that area would be encompassed within the phrase "the duty to bargain in good faith."

[67]Lundy (1974); McClung (1975).

[68]THE DEVELOPING LABOR LAW (1971) at 272.

[69]162 Conn. at 589-90, citing N.L.R.B. v. Montgomer Ward & Co., 133 F.2d 676, 686 (9th Cir. 1943). See N.L.R.B. v. Highland Park Mfg., 110 F.2d 632, 637 (4th Cir. 1940):

> [M]ere discussion with representatives of employees, with a fixed resolve on the part of the employer not to reach an agreement with them, even as to matters to which there is no disagreement, does not satisfy its provisions.

See also N.L.R.B. v. George P. Pilling & Son Co., 119 F.2d 32 (3rd Cir. 1941); N.L.R.B. v. Reed & Prince Mfg. Co., 118 F.2d 874 (1st Cir. 1941).

[70]162 Conn. at 590; N.L.R.B. v. Montgomery Ward & Co., 133 F.2d 676, 686 (9th Cir. 1943).

[71]Id. "Surface bargaining," or merely going through the motions, is a violation of the good faith standard. THE DEVELOPING LABOR LAW (1971) at 287.

[72]CONN. GEN. STAT. REV. §10-153d: "[S]uch obligation shall not compel either party to agree to a proposal or require the making of a concession." But see THE DEVELOPING LABOR LAW (1973) at 79: [T]he refusal to make concessions, or the

making of only nominal concessions, nonetheless is regarded as indicative of an intent not to reach an agreement."

[73]Id. at 591-92, citing N.L.R.B. v. Alva Allen Industries, Inc., 369 F.2d 310, 322 (8th Cir. 1966); New Canaan v. Connecticut State Board of Labor Relations, 160 Conn. 285, 293, 278 A.2d 761 (1971). See also N.L.R.B. v. Stevenson Brick & Block Co., 393 F.2d 234 (4th Cir. 1968); N.L.R.B. v. Mrs. Fay's Pies, 341 F.2d 489 (9th Cir. 1965).

The "totality of conduct" doctrine originally stemmed from N.L.R.B. v. Virginia Elec. & Power Co., 314 U.S. 469 (1941).

[74]Any of these factors, standing alone, is usually insufficient but their persuasiveness grows as the number of issues increases. Cox (1958) at 1421.

For what WOLLETT & CHANIN (1972 at 6:25 et seq.) referred to as a "catalogue" of examples of bad faith indicia, see North Dearborn Heights School Dist. and Local 1439, North Dearborn Heights Fed'n of Teachers, [1965-66] Lab. Op. 434 (Mich. L.M.B. 1966).

> [75][T]he failure to make counterproposals is not a per se violation of the act, but must be tested against the usual standard of good faith. N.L.R.B. v. Arkansas Rice Growers Ass'n, 400 F.2d 565, 571 (8th Cir.)....The board of education does not violate its duty to negotiate by refusing to make counterproposals on the mandatory subjects...as long as it is negotiating in good faith.

162 Conn. at 590.

In more recent cases under the N.L.R.A., the standard with respect to such conduct appears to be getting stricter. See, e.g., Longhorn Machine Works, 205 N.L.R.B. No. 119 (1973); Big Three Industries, Inc., 61 N.L.R.B. No. 105 (1973).

[76]162 Conn. at 591, citing Stuart Radiator Core Mfg. Co., 173 N.L.R.B. No. 27 (1968); I.T.T. Corporation, Henze Valve Service Division, 166 N.L.R.B. No. 65 (1967); East Texas Steel Castings, 154 N.L.R.B. No. 94 (1965); "M" System, Inc., 129 N.L.R.B. No. 64 (1960); Dixie Corp., 105 N.L.R.B. No. 49 (1953). But see text accompanying note 40 supra.

[77]162 Conn. at 592-93, citing Medo Photo Supply Corp. v. N.L.R.B., 321 U.S. 678 (1944); N.L.R.B. v. Katz, 369 U.S. 736 (1962); N.L.R.B. v. U.S. Sonics Corp., 312 F.2d 610 (1st Cir. 1963). See also The Gershenlager Co., 202 N.L.R.B. No. 40 (1973); Channel Master Corp., 162 N.L.R.B. 632 (1967); General Electric, 150 N.L.R.B. 192 (1964); Wings & Wheels, Inc., 139 N.L.R.B. 578 (1962).

[78]162 Conn. at 593, citing Flambeau Plastics Corp. v. N.L.R.B., 401 F.2d 128 (7th Cir. 1968), cert. denied, 393 U.S. 1019 (1969). See also Solo Cup Co. 332 F.2d 447 (4th Cir. 1964); C. & C. Plywood Corp., 163 N.L.R.B. 1022 (1967); Flowers Baking Co., 161 N.L.R.B. 1429 (1966).

[79]Billups Western Petroleum Co., 169 N.L.R.B. No. 147 (1968); Bonham Cotton Mills, 121 N.L.R.B. 1235 (1958), enforced, 289 F.2d 903 (5th Cir. 1961). Cf. Coronet Casuals, Inc., 207

N.L.R.B. No. 24 (1973) ("the duty to bargain in good faith is not fulfilled by sending in uninformed messenger to negotiations, while those with knowledge and decisional authority absent themselves from discussions").

[80]N.L.R.B. v. General Electric Co., 418 F.2d 736 (2d Cir. 1969), cert. denied, 397 U.S. 965 (1970). Cf. A. H. Belo Corp., 170 N.L.R.B. No. 175 (1968); Duro Fittings Co., 121 N.L.R.B. 377 (1958).

However, the weight of this action alone should not be overestimated. In the General Electric case, the employer had combined its take-it-or-leave-it approach with a massive publicity campaign of employee persuasion. Similar but not quite as severe conduct survived the good faith test in subsequent cases. See U.S. Gypsum Co. v. N.L.R.B., 484 F.2d 108 (8th Cir. 1973); Oneita Knitting Mills, Inc., 205 N.L.R.B. No. 76 (1973).

[81]Fitzgerald Mills Corp., 313 F.2d 260 (2d Cir. 1963), cert. denied, 375 U.S. 834 (1963); N.L.R.B. v. Davison, 318 F.2d 550 (4th Cir. 1963); Vanderbilt Products, 129 N.L.R.B. 1323 (1961).

[82]General Motors Acceptance Corp. v. N.L.R.B., 476 F.2d 850 (1st Cir. 1973); N.L.R.B. v. Ogle Protection Service, 375 F.2d 497 (6th Cir. 1967); N.L.R.B. v. Exchange Parts Co., 339 F.2d 829 (5th Cir. 1965); N.L.R.B. v. Southwestern Porcelain Steel Corp., 317 F.2d 1002 (4th Cir. 1964). See also Franklin

Equipment, 194 N.L.R.B. No. 110 (1972) (rejection of "busy lawyer" defense).

The clean hands doctrine has been applied to such private sector situations due to the mutuality of the good faith standard expressed in the N.L.R.A. See THE DEVELOPING LABOR LAW (1971) at 299.

The timelines requirement of the Teacher Negotiations Act seems stronger than that of the N.L.R.A. Concomitant with the good faith requirement, §10-153d obligates the board "to meet at reasonable times, including meetings appropriately related to the budget-making process." (Emphasis supplied.)

[83]THE DEVELOPING LABOR LAW (1971) at 307-09.

[84]Washtenaw Community College and Washtenaw Community College Educ. Ass'n, Lab. Op. 956, 960, GERR No. 280, B-3 (Jan. 20, 1969), CCH LAB. L. REP. ¶49,994.26 (Mich. L.M.B. 1968); Edwardsburg Public Schools and Edwardsburg Educ. Ass'n, Lab. Op. 927, CCH LAB. L. REP. ¶49,994.22 (Mich. L.M.B. 1968). See also Industrial Welding Co., 175 N.L.R.B. No. 78 (1969); Oregon Coast Operators Ass'n, 113 N.L.R.B. 1338 (1955); Southern Saddlery Co., 90 N.L.R.B. 1205 (1950).

The duty to supply relevant information extends to the processing of a grievance in accordance with a contractual grievance procedure. N.L.R.B. v. Acme Indus. Co., 385 U.S. 432 (1967); Commonwealth of Mass. Dep't of Public Works, Mass. Lab. Rel. Comm'n Case No. SUP-20 (1972).

[85]Saginaw Township Bd. of Educ., 1970 M.E.R.C. Lab. Op. 127 (Michigan Employment Relations Comm'n), excerpted in SMITH, EDWARDS, & CLARK (1974) at 543-45.

[86]"Findings that a union failed to make a good faith demand are usually limited to situations where the union already had sufficient information or desired only to harass or humiliate the employer." THE DEVELOPING LABOR LAW (1971) at 310-11.

[87]THE DEVELOPING LABOR LAW (1971) at 311-12.

[88]N.L.R.B. v. Truitt Mfg. Co., 351 U.S. 149 (1951). The definition of what constitutes a poverty plea has been considerably broadened in more recent cases. See, e.g., Taylor Foundry Co., 388 F.2d 1003 (5th Cir. 1964); Goodyear Aerospace Corp., 204 N.L.R.B. No. 119 (1973); Cincinnati Cordage & Paper Co., 141 N.L.R.B. 72 (1963).

[89]Westwood Community Schools, Lab. Op. 313 (Mich. E.R.C. 1972); N.L.R.B. v. My Store, Inc., 345 F.2d 494 (7th Cir. 1965); N.L.R.B. v. John S. Swift Co., 277 F.2d 641 (7th Cir. 1960); The Colonial Press, 204 N.L.R.B. No. 126 (1973); cf. Fitzgerald Mills Corp., 313 F.2d 260 (2d Cir. 1963), cert. denied, 375 U.S. 834 (1963); Butcher Boy Refrigerator Door Co., 290 F.2d 22 (7th Cir. 1961).

[90]However, the information need not be in the specific form that the teachers' representative requested. N.L.R.B.

v. Tex. Tan, Inc., 318 F.2d 472 (5th Cir. 1963); Westinghouse Electric Corp., 129 N.L.R.B. 850 (1960); Old Line Life Insurance Co., 96 N.L.R.B. 499 (1951); Cincinnati Steel Casting Co., 86 N.L.R.B. 592 (1949).

[91]Vaca v. Sipes, 386 U.S. 171 (1967); Local 367, Int'l Longshoremen's Ass'n (Galveston Maritime Ass'n), 368 F.2d 1010 (5th Cir. 1966) (Mem.). But see note 64 supra.

[92]102 Conn. at 593-96; cf. Grand Haven Bd. of Educ., Lab. Op. 1 (Mich. E.R.C. 1972). Thus, the board may have direct communication, but not direct negotiation, with the teachers in the absence of their organizational representatives with respect to mandatory subjects of negotiation.

[93]East Hartford Educ. Ass'n v. East Hartford Bd. of Educ., 30 Conn. Supp. 63, 299 A.2d 554 (Super. Ct. 1972), cited in City of Dearborn, Lab. Op. 749 (Mich. E.R.C. 1972).

Judge Naruk's opinion stated:

> To argue that a Board of Education or teachers' union which remains obdurate througout the statutory procedures provided for has complied with the policy of the Act is to exalt form over substance.

30 Conn. Supp. at 66.

[94]The "good faith" section started with a caveat concerning the mutuality issue. A similar, although less strong, qualification needs to be made for this section. The Teacher Negotiations Act explicitly directs its prohibitions only at boards. See notes 95 and 107 infra. In contrast, the N.L.R.A. specifies

prohibited practices for both the employer and the employee organization. §§8(a) and 8(b). The strength of this argument is mitigated by: 1) the provision of a protected right to refuse to join a teacher organization in §10-153a, which was enacted in the form of an amendment paralleling the Taft-Hartley amendment to §7 of the N.L.R.A.; 2) the more tentative treatment adpopted in this section of the report; and (3) the board focus of most of the prohibitions.

[95]The town or regional board of education, and its representatives, agents and superintendents shall not interfere, restrain or coerce employees in derogation of the rights guaranteed by sections 10-153a to 10-153f, inclusive, and, in the absence of any recognition or certification as the exclusive representative as provided by section 10-153b, all organizations seeking to represent members of the teaching profession shall be accorded equal treatment with respect to access to teachers, principals, members of the board of education, records, mail boxes and school facilities and participation in discussions with respect to salaries and other conditions of employment.

CONN. GEN. STAT. REV. §10-153d. See also note 104 infra.

[96]The duty to bargain under the National Labor Relations Act is similar to the duty to negotiate that is created by our Teacher Negotiations Act. A breach of this duty in the federal area is deemed a refusal to bargain and an unfair labor practice under §158(a)(5).

162 Conn. at 596. Section 158(a)(5) of the N.L.R.A. states: "It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representative of the employees...."

[97]See note 104 infra.

Specific prohibited practice sections have been enacted in the teacher negotiation statutes in several other states as well as in the "sister statutes" in Connecticut. See Appendix II. Such sections also form part of the AFT's model bill (Megel, 1975), the proposed federal public sector bargaining bill (FLYNN, 1975 at 88; MEGEL, 1974 at 9), and the proposed amendment to Connecticut's Teacher Negotiations Act submitted to the Joint Education Committee as Bill No. 6755 in the January 1975 session of the General Assembly.

[98]Conversely, unilateral action after an impasse is not an unfair labor practice. Empire Terminal Warehouse Co., 151 N.L.R.B. 1359 (1965); Mission Mfg. Co., 128 N.L.R.B. 275 (1960).

[99]New Haven Fed'n of Teachers v. New Haven Bd. of Educ. No. 132678 (Super. Ct. Feb. 12, 1973); Town of Stratford, Conn. State Bd. of Lab. Rel. Decision No. 1069 (1972); Borough of Naugatuck, Conn. State Bd. of Lab. Rel. Decision No. 769 (1967).

This analysis, based on N.L.R.B. v. Katz, 369 U.S. 736 (1962), does not appear to apply to teacher organizations because of their relative inability to effect unilateral charges. THE DEVELOPING LABOR LAW (1971) at 326.

The argument has been advanced that in the absence of a legal authorization to strike, the duty of a public employer to refrain from unilaterally altering conditions of employment during negotiations is greater than in the

private sector. See Triborough Bridge Tunnel Authority, 5 PERB ¶ 3037 (N.Y. P.E.R.B. 1972). The Connecticut Supreme Court did not reflect such reasoning in its West Hartford decision, although it may not have been confronted with the argument. It does not appear in the written briefs.

[100] 162 Conn. at 596-601, citing N.L.R.B. v. Bradley Washfountain, 192 F.2d 144 (7th Cir. 1951). Cf. Fairlawn Educ. Ass'n v. Fairlawn Bd. of Educ., No. L-30039 (N.J. Super. Ct., June 30, 1970); Bullock Creek School Dist. of Midland County and Bullock Creek Educ. Ass'n, Case No. 668 C-16 GERR No. 311, F-1 (Mich. L.M.B. 1969).

The Fairlawn case was cited in the Brief for Defendant at 28, West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566 (1972). It is arguably significant that the court reached out for private sector case law to support its decision, instead of relying at least in part on this public sector case. The court similarly omitted the teacher-board cases cited by each party in support of their position on scope as it relates to hours. Brief for Plaintiff at 9; Brief for Elihu Berman as Amicus Curiae at 13-14, West Hartford Educ. Ass'n, 162 Conn. 566 (1972). However, the court did not rely on private sector case law for its ruling on scope relating to hours, basing it instead of legislative history. It did look to teacher-board statutes of other states to analyze the other scope issues. 162 Conn. at 581.

The court also did not mention, much less distinguish, the two teacher-board cases from other jurisdictions which were cited in support of the board's position on scope as it relates to grievance arbitration. Brief for Defendant at 18. More extensive teacher-board case law is now available, as revealed by these notes generally.

[101]N.L.R.B. v. Wooster Divison, Borg-Warner Corp., 356 U.S. 342 (1958); N.L.R.B. v. Local 1082, Hod Carriers, 384 F.2d 55 (9th Cir. 1967), cert. denied, 390 U.S. 920 (1968). See note 35 and accompanying text supra.

[102]N.L.R.B. v. Big Run Coal & Clay Co. 385 F.2d 788 (6th Cir. 1967); Lozano Enterprises v. N.L.R.B. 327 F.2d 814 (9th Cir. 1964); N.L.R.B. v. Wate, Inc., 310 F.2d 700 (6th Cir. 1962); Local 12, Operating Engineers, 168 N.L.R.B. No. 27 (1967). This finding appears to extend beyond the specific supporting language of §8(d) of the N.L.R.A. See H.T. Heinz v. N.L.R.B., 311 U.S. 514 (1941). See also the reference in §10-153d to "the execution of a contract" in the context of a board's duty to negotiate.

But cf. City of Saginaw Lab. Op. 467 (Mich. E.R.C. 1967), excerpted in SMITH, EDWARDS, & CLARK (1974) at 557-59.

[103]Duro Fittings, 121 N.L.R.B. 377 (1958); N.L.R.B. v. Cold Storeage Corp., 203 F.2d 924 (5th Cir. 1953). See also N.L.R.B. v. Yutana Barge Lines, 315 F.2d 524 (9th Cir. 1963) (refusal to bargain with part of the bargaining unit); N.L.R.B.

v. American Aggregate Co., 305 F.2d 559 (5th Cir. 1962).

[104] Members of the teaching profession shall have the right to join or refuse to join any organization for professional or economic improvement free from interference, restraint, coercion, or discriminatory practices by any employing board of education or administrative agents or representatives thereof.

CONN. GEN. STAT. REV. §10-153a.

In addition, §10-153d repeats the same strictures, minus the "discrimination" language, upon boards with respect to the rights guaranteed to teachers by §§10-153a to 10-153f inclusive. See note 95 supra. This language can be traced to §8(a)(1) of the N.L.R.A.

[105] In contrast, an area such as "open" v. "closed" bargaining sessions is a controversial area with respect to its relationship to scope, good faith, and prohibited practices. For underlying policy arguments, see SMITH, EDWARDS, & CLARK (1974) at 570-94; Ridgeley (1974) at 4; ROWE (1967) at 9. Negotiations sessions and records are specifically exempt from the requirements of Connecticut's Freedom of Information Act. P.A. 75-342 §§1(b) and 2(b)(8).

[106] Republic Aviation Corp. v. N.L.R.B., 324 U.S. 793 (1945). Cf. Los Angeles Teachers' Union, Local 1021 v. Los Angeles Bd. of Educ., 71 Cal.2d 551, 78 Cal.Rptr. 723, 455 P.2d 827 (1969); Utica Community Schools, Michigan Fed'n of teachers and Utica Educ. Ass'n, Lab. Op. 210, CCH LAB. L. REP. ¶49,753 (Mich. L.M.B. 1966).

The employer may prohibit distribution of organizational literature by nonemployee organizers if (1) reasonably

alternative means are available to reach the employees, and (2) the employer does not discriminate by allowing solicitation by the nonemployee representatives of a rival organization. N.L.R.B. v. Babcock & Wilcox, 351 U.S. 105 (1956).

An analysis of the status of other conduct in this area (e.g., organizational insignia, captive audience speeches, interrogation and polling) is deliberately omitted because of the complexity of this area of the law combined with the relative lack of conflict in this area of teacher-board relations. See WOLLETT & CHANIN (1970) at 6:5.

[107]Wisconsin Fed'n of Teachers v. Joint Dist. No. 1, Village of Waunakee, 566 L.R.R.M. 1146 (Wisc. E.R.B. 1964); Utica Community Schools, Michigan Fed'n of Teachers, and Utica Educ. Ass'n, Lab. Op. 210, CCH LAB. L. REP. ¶49,753 (Mich. L.M.B. 1966).

Institutional advantages may, however, be granted once the organizational stage is over. The Teacher Negotiations Act requires equal treatment and equal access only prior to certification. See note 95 supra. See also H. Robert Bailey and Joint School Dist. No. 1, Sheboygan Falls, 60 L.R.R.M. 167 (Wisc. E.R.B. 1965); Clark County Classroom Teachers Ass'n v. Clark County School Dist., 532 P.2d 1032 (Nev. 1975).

The charge of employer domination may require more specific statutory support. See THE DEVELOPING LABOR LAW (1971) at 135-36. See also the discussion of the Utica case in

WOLLETT & CHANIN (1970) at 6:9.

[108]Koeller and Muskego-Norway Consol. Schools Joint School Dist. No. 9, 35 Wis.2d 540, 151 N.W.2d 617 (1966); cf. In the matter of Summerfield School Dist. and Summerfield Educ. Ass'n, Case No. C68 D-37, GERR No. 314, F-1 (Mich. E.R.B. 1969). See N.L.R.B. v. Burnup & Sims, Inc., 379 U.S. 21 (1965) (discharging a union organizer); N.L.R.B. v. Exchange Parts Co., 375 U.S. 405 (1964) (conferring economic benefits prior to representational election). See also Kenosha Teachers Union Local 557 v. Wisconsin Employment Relations Bd., 39 Wis.2d 196, 158 N.W.2d 914 (1968).

[109]The inclusion of this study as part of the research for this report was suggested by Professor Peter Adomeit of the University of Connecticut School of Law. The study was designed by the author of this report. The data was collected by Alice McAlister and Carolyn Mitchell. For a parallel project conducted in New Jersey, see Keyek (1974).

The results summarized in this Appendix are based on an examination of 50 collective bargaining agreements selected at random from those in prevailing in 1974-75 fo all Connecticut school districts. These 50 agreements represent 6 urban districts, 20 suburban districts, and 24 rural districts. There were complete contracts for 47 of the districts. The other three districts only had salary agreements.

A list of the districts in the total sample and a complete copy of the results of the study are on file in the SDE. Hopefully, this study will serve as the first step towards the development of a computerized data bank concerning the provisions in all teacher-board contracts negotiated in Connecticut each year.

The summary in this Appendix indicates the number of districts in the sample which had and the number which did not have contractual clauses relating to various items aside from salary. Where the contractual clauses fit into meaningful subcategories with respect to an individual item, these subcategories and their respective frequencies have been indicated under the "yes" row. In addition, the corresponding percentages for the "yes" results have been provided based on the total sample size (n=50), which included the three districts which only had salary agreements.

Finally, it should be emphasized that these results only inferentially represent the scope of actual negotiations since they are based only on the written end-products of the negotiations process. These figures are generally lower than the scope of negotiations, since some items which were actually negotiated presumedly did not result in written agreement. This "iceberg effect" is mitigated to the extent that some of the items which reached the level of written agreement did so in the form of management prerogatives. The frequency

of items resulting in a management prerogatives designation are indicated in the summary as a subcategory under the "yes" row, since they had to have been negotiated to reach this result.

[110]For some comparison data for the years 1964-65, 1966-67, and 1970-71 see Barstow (1968), ROWE (1967), and Brief of Elihu Berman as Amicus Curiae at 6, West Hartford Educ. Ass'n v. DeCourcy, 162 Conn. 566 (1972). The comparison possibilities are largely limited due to differences in design factors (e.g., sampling procedure and item coverage). However, the expanding evolution of scope is evident. For example, the respective figures for grievance procedures are as follows:

1964-65	negligible
1966-67	12%
1970-71	34%
1974-75	92%

[111]The face sheet of this Appendix represents a tabular summary of the results of an analysis of state statutes applicable to teacher-board negotiations as of September 1975 with respect to scope of negotiations, good faith bargaining, and unfair labor practices. The specific statutory provisions relating to scope and a coded categorization of the provisions relating to good faith bargaining and unfair labor practices are given in the subsequent sections of the Appendix.

[112]The similarity of Connecticut's labor statutes was noted and used by the Connecticut Supreme Court in interpreting

the Teacher Negotiations Act. 162 Conn. at 579. For this reason, they have been included in this survey along with the teacher negotiation statutes of other states. They are, in order of inclusion, the Municipal Employment Relations Act (§7-469), the recently enacted collective bargaining act for state employees (P.A. 75-566), and the private sector Labor Relations Act (§§31-108 through 31-111).

[113]The relevant provisions of the N.L.R.A. are also included due to the important influence of this landmark legislation. Current proposals for a public sector negotiations act which are being considered by Congress are not included in this analysis. For a description of these bills, see MEGEL (1974 at 9) and FLYNN (1975 at 88). For an analysis of the preemption problems that they pose, see Lieberman (1975a). For further arguments, see Chanin (1975) and Lieberman (1975b).

APPENDIX IV

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